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Of Attorneys for Defendant Sean Riddell

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Eugene Division

MARK LONG,

Plaintiff,

v.

JOHN KROGER, SEAN C. RIDDELL,  
and the STATE OF OREGON, by and  
through THE OREGON DEPARTMENT  
OF JUSTICE,

Defendants.

)  
) Case No. 6:12-cv-1383-TC  
)  
)

) **DECLARATION OF KEITH BAUER**  
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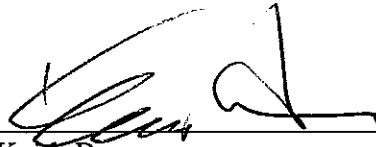
I, KEITH BAUER, am an attorney for defendant Sean Riddell. I am an adult, and I am competent to make this declaration. I have personal knowledge of the matters stated herein and declare the following:

Defendants received from the Oregon State Bar a "Public Memorandum", entitled "Sean Riddell investigation/dismissal." Exhibit A, attached to this Declaration, is a true copy of the Public Memorandum provided to me.

Defendants also received from the Oregon State Bar a certified true copy of correspondence to William F. Gary and David B. Frohnmayer, dated September 25, 2012. A copy of this correspondence is attached to this Declaration as Exhibit B and is a true copy of the document provided to me.

**I declare under the penalty of perjury that the foregoing is true and correct.**

Dated this 30<sup>th</sup> day of October, 2012.

  
\_\_\_\_\_  
Keith Bauer

## Public Memorandum

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**Date:** September 27, 2012  
**From:** Kateri Walsh  
**Re:** Sean Riddell investigation/dismissal

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In May 2011, attorneys William Gary and David Frohnmayer filed a complaint with the Oregon State Bar alleging that Sean Riddell, then Chief Counsel with the Criminal Justice Division of the Oregon Department of Justice, committed ethics violations during the course of a criminal investigation conducted between August and December, 2010.

Typically, information concerning a Bar investigation and documents gathered during such an investigation are public record. When Gary/Frohnmayer filed their complaint, however, many of the documents relevant to the criminal investigation -- and consequently to the Bar investigation -- were subject to a protective order entered in the Marion County Circuit Court on March 11, 2011. A second protective order was entered on July 14, 2011, also in Marion County Circuit Court. It allowed the Bar access to the protected records but prohibited it from discussing or revealing their contents other than in connection with the disciplinary process. The July 14 order also prohibits the Bar from disclosing any of its own notes, memoranda, or other documents that refer in whole or in part to the protected documents.

The July 14 order is still in effect. Thus, even though the State Professional Responsibility Board dismissed the complaint against Riddell on September 22, 2012, most of the materials in the Bar's file may not be disclosed.

The following is a brief description of the complaint, Riddell's response, staff's analysis, and the State Professional Responsibility Board's decision that does not contain or refer to protected documents.

EXHIBIT A  
PAGE 1 OF 2

The Department of Justice's criminal investigation arose out of an energy assurance planning contract that the Oregon Department of Energy awarded to RW Beck in June, 2010, and a subcontract RW Beck then entered with an Oregon company TEEM. The focus of DOJ's investigation was whether ODOE employees had engaged in official misconduct by inducing or coercing RW Beck to enter the subcontract with TEEM. The DOJ investigation ended in December, 2010, with a "no prosecution" recommendation.

In their complaint, Gary and Frohnmayer alleged that during the investigation, on three occasions, DOJ investigator Riddell lied to or intimidated witnesses in attempts to obtain statements falsely implicating the targets of his investigation. They alleged that: Riddell falsely told one witness that other witnesses had contradicted her testimony; Riddell threatened a witness that she could go to jail unless she testified a certain way; and Riddell told two witnesses that ODOE staff had violated certain laws.

In response to Gary/Frohnmayer's complaint, Riddell denied misrepresenting the law or any fact and further denied any attempt to coerce a witness to tell an untruth.

After Bar staff investigated the complaint, analyzed the facts, and made a recommendation, the State Professional Responsibility Board ("SPRB") concluded that there was no probable cause to charge Riddell with violating any rule of professional responsibility. To the extent that he made any representation of law or fact that was inaccurate or partially inaccurate, the SPRB found insufficient evidence to conclude that Riddell knew of the inaccuracy when he made the representation and/or that any inaccuracy was material in the sense that it would likely affect the decision-making process of the person to whom it was directed. As to the allegation that Riddell had improperly attempted to intimidate a witness, the SPRB noted that the witness's account of Riddell's conduct was disputed by others who were present in the room. Also, the witness was represented by counsel when Riddell was questioning her and thus protected from intimidation. For those reasons, the SPRB was not convinced that Riddell's conduct crossed the line between vigorous questioning and improper coercion.

I certify that this document is  
a true copy of the original and  
the whole thereof.

Jennifer Brand

Oregon State Bar

September 25, 2012

William F. Gary  
Harrang Long Gary Rudnick PC  
360 East 10th Avenue, Suite 300  
Eugene, OR 97440

David B. Frohnmayer  
Harrang Long Gary Rudnick PC  
360 East 10th Avenue, Suite 300  
Eugene, OR 97440

Re: Sean J. Riddell (William F. Gary/David B. Frohnmayer/Phillip D. Chadsey)

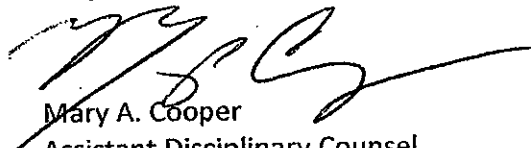
Dear Mr. Gary and Mr. Frohnmayer:

At a meeting held on September 22, 2012, the State Professional Responsibility Board reviewed the matter you brought to our attention concerning attorney Sean J. Riddell.

After carefully considering this matter, the Board found no violation of the Oregon Rules of Professional Conduct by Mr. Riddell. I was directed to advise you and Mr. Riddell of this decision and to close our file.

Thank you for your assistance and cooperation in this matter.

Very truly yours,

  
Mary A. Cooper  
Assistant Disciplinary Counsel  
Extension 321

MAC:kld

cc: Sean J. Riddell  
c/o Mark J. Fucile

Ronald M. Baugh

EXHIBIT B  
PAGE 1 OF 1

40-12

16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, Oregon 97281-1935

(503) 620-0222 toll-free in Oregon (800) 452-8260 Regulatory Services fax (503) 968-4457 www.osbar.org

## CERTIFICATE OF SERVICE

I hereby certify that on the 30<sup>th</sup> day of October, 2012, I served the foregoing

DECLARATION OF KEITH BAUER on the following parties:

William F. Gary, OSB No. 770325

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MARKOWITZ, HERBOLD, GLADE & MEHLHAF, P.C.

Of Attorneys for Defendants John Kroger and State of Oregon

by electronic means through the Court's Case Management/Electronic Case File system.

PARKS BAUER SIME WINKLER & FERNETY LLP

By: /s/ Keith Bauer

Keith J. Bauer, OSB No. 730234

[kbauer@pbswlaw.com](mailto:kbauer@pbswlaw.com)

Of Attorneys for Defendant Sean Riddell